

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

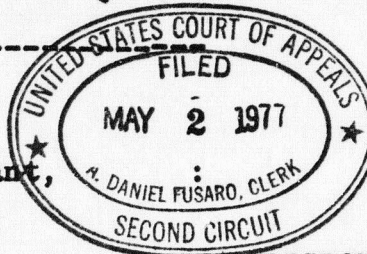
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MILLICENT LINDEN,

Plaintiff-Appellant,



77 - 7022

- v -

RESPONSE IN OPPOSITION

SEYMOUR SCHWARTZ & BERNARD WEISS,
Justices of the Civil Court

-----Defendants-Appellees-----

STATE OF NEW YORK)
COUNTY OF NEW YORK) S.S.:

Reply
BRIEF

Plaintiff-Appellant, Millicent Linden,
duly swears to the full truth of the following in total accordance
with the facts in the original records:

DEFENDANTS' BRIEF FOR APPELLEES is postmarked April 21, 1977,
while the typewritten date at the end of the Brief is entered as
"May , 1977" with no day of the month inserted. Yet defense moved
for enlargement of time before this Court April 15, 1977. to May 1, 1977.

Plaintiff received said Brief on April 23rd, 1977, and hereby
replies in opposition, on this day of April 25, 1977.

To reply to defendants' brief, plaintiff recapitulates in out-
line briefly elementary, fundamental facts documented in the county
clerk's records in the Supreme Court of New York State and the Civil
Court of New York City upon which the issues in the matter are based.
The facts are contained in the exhibits with plaintiff's Appeal Brief
which are true, exact copies of the originals, and will form the
foundation of plaintiff's reply in opposition.

- . August 24, 1975 - duly verified Bill of Particulars
- . October 10, 1975 - county clerk transfer record verifying
duly verified b/o/p for transfer to Civil Court

- September 29, 1975 - verified Inspection & Discovery Statement
- October 10, 1975 - county clerk record of Insp. & Disc. reply statement.
- October 24, 1975 - motion by defense attorney in plaintiff's suit against defendant-doctor, demanding verified b/o/p and Insp. & Disc. statement and further b/o/p before Supreme Court Judge George Starke
- October 27, 1977 - plaintiff's re-verified b/o/p to Judge Starke and second Insp. & Disc. and further b/o/p
- October 31, 1977 - defense attorney's second motion before Supreme Court Judge George Postel, demanding verified b/o/p, Insp. & Disc. and further b/o/p and to strike pl.'s case from the calendar
- November, 1975 - Pl.'s letters to Judges Starke & Postel, no response, re-stating satisfied demands and omission of document in defendant's papers to pl. submitted to Courts
- December 18, 1975 - Pl.'s reverified b/o/p, second supply of further b/o/p, including verbatim transcripts of defendant-doctor's own description of facts demanded by def. in item 3 of b/o/p and pl.'s summarization of same
- January 8, 1976 - Scheduled date of trial in Civil Court; def. attorney submits alleged order by Judge Postel to strike from calendar which is not in any records anywhere
- Defendant-Judge Bernard Weiss signs order to strike from calendar without hearing pl.'s facts cited above
- January 12, 1976 - Def.attorney's motion before Defendant-Judge Seymour Schwartz to preclude for lack of pre-trial proceedings, namely, alleged non-verified b/o/p, further demand of b/o/p, item 3, etc.
- January 19, 1976 - Pl.'s Show Cause before Judge Schwartz, submitting true, exact copies of county clerk records of repeated verifications of b/o/p, item 3, Insp. & Disc.
- January 12, 1976 - Judge Schwartz' signed order, same day of motion by defense attorney, denying plaintiff's submissions and granting defendant's motion to preclude
- January 19, 1976 - Same day signed order of motion by pl. for Show Cause denying plaintiff's requests in total, adding, "See orders of Judges Starke and Postel"
- February 25, 1976 - Signed order by Judge Schwartz, day of oral argument in chambers, repeating denials to pl. granting def.'s demands, telling def. to move for dismissal telling pl. to "GO TAKE UP SOME RELIGION, LAWYERS GOT TO LIVE", and underlinign his written phrase "pro se" in this and all other orders signed by him.
- March 12, 1976 - Motions by pl. to sitting judges in motion court demanded to be referred to Judge Schwartz by defense attorney and granted by sitting judge to Judge Schwartz who granted def.'s demand & denied pl.'s facts entirely

- April 12, 1976 - Written statement by Judge George Postel to plaintiff saying he never ruled on the motion and order used to strike pl.'s case from the calendar
- April 28, 1976 - Defendant-Judge Seymour Schwartz' 3 signed orders, all on the same day, repeating mandate to respond to orders by Judges Starke & Postel, denying plaintiff every request despite submissions of Judge Postel's letter saying that he never ruled on the motion that took pl.'s case off the calendar and that each and every mandate by Judge Starke had long been satisfied initially and repeatedly
- April 19, 1976 - Defendant-Judge Bernard Weiss' signed order without any motion or any issues before him stating denial of pl.'s requests in accordance with Judge Schwartz' denial of pl.'s requests, referring to Judge Schwartz

Plaintiff is constrained to have had to repeat these excerpted facts which are contained within the exhibits, but they are requisite to responding to the contents to the Appellees' Brief.

On page 3, defendants' brief writes as follows: (3rd paragraph)

"In defending Dr. Novick, a Demand for a Bill of Particulars was served upon the plaintiff therein to which there was no effective response."

The documented facts on record are diametrically opposite to said statement by defense. The foregoing outline in brief shows that there was more than "an effective response" - three full, fat volumes of "response" to which defense attorney complained and Judge Schwartz in the courtroom before witnesses stated that he had seen the file in the library on the 10th floor and complained of its voluminous size.

Same paragraph, defense writes:

"Subsequently, A demand for a further Bill of Particulars was served upon her to which no effective response was received."

The file is full of certified, returned receipt signed of "further B/O/P", court minute transcripts, summarizations of them, additional details, etc. etc. and in the next paragraph, defense

writes:

"On January 8, 1976, the case appeared in hte Personal Appearance Calendar before Judge Weiss, who, upon motion, struck it off said calendar."

The issues involved were not open to interpretation or discretion of judicial privilege, but just plain, ordinary, elementary, fundamental facts of record, of documentations by the county clerk in the Supreme Court and the clerk of the Civil Court prompted by defense attorney's demand for a verified bill of particulars, a statement of Insp. & Discovery and a further b/o/p.

A b/o/p is either verified or it is not, and when the county clerk stamp and the transfer record show that it is verified, then it is verified.

Yet, Judge Weiss strikes plaintiff's case from the calendar on the basis of an alleged demand and claim of an unverified b/o/p by defense attorney while plaintiff submitted proof of a verified b/o/p and further b/o/p and all statements demand in pre-trial proceedings, and done to the utmost of all that was and is available for satisfaction

Yet, Judge Schwartz continued the same pattern of denying the plain, ordinary, elementary, fundamental facts on record and granting defense attorney's repeated demands for what was already satisfied several times over and over.

Judge Schwartz repeated those denials so contrary to the record in each and every one of his SEVEN (7) signed orders by him.

These same patterns of denial of plaintiff's rights based upon facts on record not open to interpretation or discretionary privileges were continued in each of plaintiff's appeals to the Appellate Term and Appellate Division, affirming each of the orders and denying plaintiff each of the county clerk facts on record. Under these circum-

stances, how could defense attorney in the instant brief write:

"As such, all avenues of motions and appeals were open to the plaintiff to pursue her remedies of which she could avail herself."

Clearly, ALL AVENUES in the State and Civil Courts were closed to plaintiff behind the guise of "legal power" from the bench recognizing defense attorney's demands regardless of their non-factual nature and denying plaintiff's submissions reflecting nothing but the facts on record. Plaintiff is only pro se, not versed, not trained, not practiced in the field of law, with only common sense and integrity upon which to lean, and, therefore, not equipped to do anything but report the facts as they are, while both the experienced, practiced attorney in law and the judges sitting on the bench with legal power whatever the facts, can manipulate as they subjectively desire, and did so within the obvious realm of pro se prejudice.

Shall such prejudice preclude the right to be heard, the right to trial by jury as mandated directly in the Constitution?

Page 4, defense presents the question "Whether state court judges may be liable for acts committed in the exercise of their judicial functions?"

The fourteenth amendment of the Constitution refers to the "color of state", wherein a state official or conduct impedes the directives of the Constitution, the law of the land supercedes that conduct.

Defense also asks, same page, last paragraph: "Whether the federal judiciary may sit in appellate review of state court judgements rendered in actions over which the federal courts lack subject matter jurisdiction

Plaintiff's complaint is focused upon the denial of the Constitutional right to be heard, not upon any "appellate review" of "state court judgements". and "jurisdictions". The Appellate Division of the

State Supreme Court denied jurisdiction when plaintiff brought an Article 78 Mandamus upon defendant-judges. When the State Court denies jurisdiction, (without stating reasons in the order), then what is there left but the Federal Court, unless defense attorney would deny our mutual heritage of the precious right to the liberty to seeking redress for gross wrongs? Jurisdiction not over the cases submitted in the State Courts, but jurisdiction over the protection of those rights under the laws of the land to be granted the right to be heard. Otherwise, that tyranny from which our forebears declared their independence from King George is not in effect, abolished, it is still present, but this time under the cloak of justice rather than injustice.

There is more than sufficient official misconduct in the foregoing recited facts in the State Courts to warrant a new trial to plaintiff's case against the defendant-doctor who did plaintiff such severe physical injury that life lived in continuing threat and in emergency conditions on a daily basis. And that injury was done with malice, deliberateness and intent to maim, and so stated in his own words, and should be heard in a trial by jury as is due process guarantee of our Constitution for them to decide a verdict, not the solitary bench meting out prejudice against pro se as though that were the initial manner, as though being just an individual, unaffiliated, without material assets of any kind is in itself a legal violation.

If defendant-judges and defense attorneys in the Attorney General office expected such facts to be extant, to look upon pro se appearance as an illegality, a violation of the rights of the individual, then they, too, are in danger in such an attitude rampant upon society at large. There is no retreat from tyranny wherever it is exercised, and less so, in the courts purporting to mete out laws of justice.

The injustice done is not merely an injustice done to plaintiff, it is an injustice done to all, to the sitting courts themselves ruling unjust orders far from the facts as well as the unscrupulous attorneys. To expect it without objecting is a reflection upon all Courts; this Court, plaintiff believes, is interested in what injustice has taken place, that it is justly proud of protecting the rights mandated in the Constitution of the individual to be heard in redress, that it will not reflect the pattern of practice of the defendant-judges.

On page 5, defense proclaims "judicial immunity", and cites "ancient law" of that doctrine.

But the facts at large do not uphold such a claim. After all, ancient law did not manage to establish the rights to freedom as we know them in the mandates of our Constitution, and the facts of history are replete of tyrannies practiced in ancient times whatever any ancient laws on the books may have been set down on paper. Thomas Paine described these facts eloquently, dynamically and lucidly in his first pamphlet that sparked our Declaration of Independence from such tyrannies and "ancient laws" that never prevented those tyrannies entitled COMMON SENSE" and later enlarged upon in His RIGHTS OF MAN.

Recent history has shown that even a President of the United States has been held accountable and is still being held accountable for his actions which violated the fundamental laws of the land.

Defendant-judges Schwartz and Weiss, not only violated the most elementary rudiments of legal facts on record, of just documentations of dates and verifications, but they persisted in such repeated patterns that it was no longer a matter of just massive, wholesale repetitions of denials of plaintiff's rights with an over-proportion of 9 signed orders disavowing those facts on record, openly, defiantly, but a matter of life itself for which the Constitution proclaimed sanctity.

It is an effrontery to the cause of justice to defy the non-discretionary elementary facts of procedure, not subject to interpretation, and flagrantly defy plaintiff's legal rights in disavowing them.

It is an effrontery to elementary, human decency when those who sit proclaiming to dispense justice see first-hand the physical suffering of the plaintiff, with medical and hospital records in hand of the dire diagnosis of that physical suffering, and deliberately add to it grave aggravation to the physical torment with undue, unwarranted court proceedings, knowing that severe muscle spasms throughout the entire spine in the course of dealing with the unjust court orders for more than two years when court protocol demands sitting down, while muscle spasms demand gentle movements standing up and taking small walking steps, that the treatments done so long on an emergency basis were deflected with these aggravations, that life hung on a thread and on those precious treatments, still unpaid for and still mounting. Each trip to court was a trip of torment as the jostling displaced the already displaced, unstable pelvis and consequent misalignments of the whole spine, and setting back much of the value of those precious treatments upon which life hung.

The inevitable question lurks behind these facts of these events: How human are these human beings who stand by and see this physical suffering and add to it deliberately? Do they proclaim civilized claims

Shall the so-called doctrine of "judicial immunity" take precedence over the welfare of another individual's very life and threat to it?

Is it not tantamount to practicing the "cruel and unusual punishment" that the Constitution mandates shall not be done?

The Constitution states that: JUDGES IN EVERY STATE SHALL BE BOUND BY THE CONSTITUTION, THE LAWS & TREATIES OF THE UNITED STATES, WHICH SHALL BE THE SUPREME LAW OF THE LAND. "Supreme" law of the land

mist surely transcend "judicial immunity" in any declaration of conscience where the violations are not just a single, isolated incident, but a series of continuing cruel acts, repeated against all the laws of the land and against all the laws of human decency and respect for life itself.

Where defense cites the Supreme Court case of "judicial immunity" were these circumstances before the Supreme Court of the United States, it would be tantamount to saying that those illustrious judges would sanction such cruel acts as exercised by defendant-judges, against plaintiff's life and health and against the most flagrant, irrefutable facts of violations of the most fundamental laws of the land. It would be tantamount to saying that the Constitution has no value, no interest in protecting life and limb, let alone dispensing justice, that there is no human decency in that body of men when it comes to seeing the state of the matter and to adding aggravation to physical injury in a sadistic-like manner. Plaintiff cannot be led to believe that the judges of the United States Supreme Court would sanction such abuse, any more than plaintiff can believe if of this Court.

In citing the "notion of comity", the same pattern applies: does the principle of acknowledging professional "ethics" also take precedence over the gross violation of Constitutional rights and the rights of human welfare where life is threatened.

Page 6, defense quotes these words: "...judges should be at liberty to exercise their functions...". To the extent of unabated, unchecked sadistic tyranny? Plaintiff has a right to fend for her life, to expect some basic decency in the courts and from the courts, but how far can "judicial liberty" be extended? To the repeated physical and legal harm practiced by the defendant-judges, in denying plaintiff the rudimentary procedural facts and exerting physical demands upon

an already depleted and seriously limited physical resources?

Another phrase in the queue reads: "His errors may be corrected.." But we are not here dealing with "ERRORS"; we are dealing with out-and-out deliberateness far from the realm of "errors". There is surely a wide, great, discrepancy between what may be construed as human "error" and what is established as knowing actions contrary to the facts which are not done in "error" but with premeditated malice afrethought on the basis of no other reason but that plaintiff appears pro se.

All those cases of precedences listed by defense are in fact no precedence of any kind for the issues involved in the instant matter. The list is impressive, but the facts are not. There are no legalities to be under arbitration of dispute; there are nothing but plain, clear cut facts of mundane recording in the record books.

Page 8, defense quotes: "..that under the principle ~~mixxamity~~ known as comity a federal district court has no power to intervene in the internal procedures of the state courts."

Once again, plaintiff reminds defense that there has been no suggestion of "intervention" in the state courts; the state courts have denied plaintiff all the facts and refused to consider them at all, and they are now exhausted of further procedures in the state courts. How can there be intervention when there are not now any procedures in State or Civil Courts to intervene with or from? Those courts have closed their ears and doors to plaintiff for any further deliberations.

Page 9, defense quotes: "..the Civil Rights Act was not designed to be used as a substitute for the right of appeal."

Once again, plaintiff has not now any further means of appeal in the State courts, and it is BECAUSE the all the avenues of the State

courts have denied plaintiff the Constitutional rights of which all states must answer to, that plaintiff is compelled to bring the issues to the Federal Court, that Court that responds to the Constitutional mandates. Each of the different avenues in the state courts affirmed each other; could they permit a solitary, impecunious, independent individual make claim to legal rights when the legal administrators denied them in the first place?

The route of "res judicata" defense refers to on page 9 followed that of the verified bill of particulars. The facts were not acknowledged anywhere by anyone. The judge dismissing on summary judgement is a next door neighbor to defendant-judge Schwartz, and defense attorney never moved for dismissal on summary judgment for more than a year of court procedure until defendant-judge Schwartz told him to do so on February 25, 1976 in chambers. Right after that time, Judge Schwartz held plaintiff's original file record in chambers, denying plaintiff access to those records to look for signed orders from motions, and could not get them until plaintiff appealed to the administrative judge for them. And then defense moved for summary judgement dismissal only when Judge Schwartz' next-door neighbor, Judge Walter Shackman sat in the motion court. And in that court, Judge Shcackman told plaintiff that he would only hear arguments of the law, knowing that plaintiff is appearing pro se and not a lawyer.

In any event, there is enough official misconduct to warrant a new trial for plaintiff's suit against the defendant-doctr. Those facts, too, are clear; defendant-doctor stated his act of injury in a previous trial, in essence describing in detail what he did, that he DID NOT FOLLOW PREVAILING STANDARD PROCEDURES while the sitting court at that time wrote in his judgement for the defendant that the defendant-doctor DID FOLLOW STANDARD PREVAILING PROCEDURES.

Plaintiff was awarded the transcripts of those minutes and the institution of a second suit ~~en~~ forma pauperis on the basis of the new evidence acquired in the course of the first trial not had before then and providing morethan sufficient facts to warrant a second suit.

As to defense attorney's claim that plaintiff's complaint is "barran of any suggestion that a substantial federal question was involved in the challenged state court~~m~~ proceedings.." the foregoing are self-evident in the wealth of "substantial federal questions" that warrant this Court's supervison of Constitutional rights.

In stating that "Appellant fails to cite one judicial authority for the relief she seeks before this Court", plaintiff can only reply that she will not in any way attempt to proclaim legal measure for relief. Plaintiff looks to this Court, as legal authorities of long standing and practice and position, to look to plaintiff's rights and the dispensation of the laws of which this Court has in hand that are there for the guarenteed rights of the protections mandated in the Constitution. Plaintiff is only pro se, and presents the facts as they are and documented and proven in the original records. Just plain common sense tells plaintiff that the law of the land has been violated, mischievously, deliberately, that there must surely be laws that are meant to protect the individual against such mischief. It is a matter of law combined with a matter of human~~y~~ decency, and plaintiff looks to this Court to respond to both. Plaintiff is not asking this Court to "...decide these suits over which the Federal Court has no jurisdiction" as defense alleges on page 9. ^{THERE ARE NO SUITS OVER WHICH THE FEDERAL COURT HAS JURISDICTION} This Court does have jurisdiction over the rights guaranteed by the Constittution and plaintiff's complaint is that those rights have been violated. It is incumbent upon each of us to protect that Constitution for which so many lives have been sacrificed, to protect it from the violence

of cruel injustice in law and cruel injustice in life forces where the law of nature corresponds to these laws in the preservation of life.

On the last page of the brief, defense repeats that "...the state courts decisions and actions were erroneous, insufficient to state a federal claim." Plaintiff repeats that the complaint is not based on "errors" but on deliberate violations, repeated over and over, massively, abusing the powers of the court to suppress and deny plaintiff's right to trial by jury without warrant. There is in every respect a "federal question" in denying plaintiff that right mandated directly in the Constitution, the "supreme law of the land." which makes it over the state courts and within Federal jurisdiction.

Plaintiff's complaint can all too readily "...be construed as deprivation of federally secured rights", contrary to defendants' denial of them. The facts make it undeniable and fully documented.

Even in defense attorney's CONCLUSION, the statement alleges "dismissing the complaint" on the basis of the above cited facts.

Plaintiff hereby quotes from the NOTEBOOKS OF LEONARDO DA VINCI for a concluding statement: "He who neglects to right ^{correct} evil, sanctions the doing thereof." Plaintiff looks to this Court to right the wrong ^{THE LEGAL SYSTEM} done on the basis of right to be heard upon the merits of the facts ^{God's Law # 16} under the direct mandate of the CONSTITUTION.

Dated: April 25, 1977, New York, N.Y.

Respectfully submitted,

To: Gerald J. Ryan, Assistant Attorney General
of Counsel
Two World Trade Center, New York, N.Y. 10047
Millicent Linden
500 East 74th Street
New York, N.Y. 10021

SWORN TO BEFORE ME THIS

25 DAY OF APRIL, 1977

Channe Lipson
Notary Public

CHANNE LIPSON
NOTARY PUBLIC, State of New York
No. 31-4623094
Qualified in New York County
Commission Expires March 30, 1978

AFFIDAVIT OF SERVICE BY MAIL

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

STATE OF NEW YORK)
 : S.S. :
COUNTY OF NEW YORK)

MILLICENT LINDEN, being duly sworn,
deposes and says that deponent is over 18 years of age and
resides at 500 East 74th Street, New York, New York 10021.

On April 25, 1977, 1977,
deponent served the within RESPONSE TO OPPOSITION
upon:

Gerald J. Ryan, Esq.

Attorney for Defendant
P.O. Address

Assistant Attorney General of Counsel
Two World Trade Center
New York, N.Y. 10047

by depositing true copies of same enclosed in postpaid properly
addressed wrappers, in a post office official depository under
the exclusive care and custody of the United States Postal
Service within the State of New York.

Millicent Linden

SWORN TO BEFORE ME THIS

25 day of April, 1977

Dianne Lipson

Notary Public

DIANNE LIPSON
NOTARY PUBLIC, State of New York
No. 31-4623094
Qualified in New York County
Commission Expires March 30, 1978

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RESPONSE IN OPPOISITION

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